Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
GTE CORPORATION,	)	
Transferor,	)	
and	)	**CC Docket No. 98-184**
BELL ATLANTIC CORP.,	)	
Transferee,	)	
For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and to Application to Transfer Control of a Submarine Cable Landing License	)	

COMMENTS OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises ("ASCENT"), through undersigned counsel and in response to *Public Notice*, DA 01-1987 (released August 23, 2001) ("*Public Notice*"), hereby responds to two *ex parte* communications submitted by Verizon in the above-captioned proceeding on August 10 and August 17, 2001. It its August 10 *ex parte*, Verizon identifies a number of the pro-competitive conditions to which Bell Atlantic Corp. ("Bell Atlantic") acquiesced in order to secure Commission approval of its merger with GTE Corporation ("GTE") that Verizon contends must be waived in order to facilitate resale of digital subscriber line ("DSL") service over resold lines by its advanced services affiliate -- Verizon Advanced Services, Inc. ("VADI"). It its August 17 *ex parte*, Verizon identifies those merger conditions which it asserts must be waived in order to facilitate resale of digital subscriber line ("DSL") service over resold lines on an integrated

basis following the reintegration of VADI. ASCENT opposes Verizon's request that its DSL Over Resold Lines ("DRL") service be exempted from the Carrier-to-Carrier Performance Plan reporting requirements adopted as part of the Bell Atlantic/GTE merger conditions. While Verizon argues that exclusion of DRL service from the performance reports required by the Carrier-to-Carrier Performance Plan is necessary to allow it and VADI "an opportunity to gain commercial experience providing the new service,"[1] ASCENT submits that the rationale so proffered by the carrier falls far short of the justification necessary to warrant grant of the relief it requests.

The Carrier-to-Carrier Performance Plan was included among the Bell Atlantic/GTE merger conditions to "offset or prevent some of the merger's potential harmful effects."[2] Specifically, the Carrier-to-Carrier Performance Plan was intended to ensure that the merged entity's "increased incentive and ability to discriminate" did not cause "service to telecommunications carriers . . . [to] deteriorate," and "to stimulate the merged entity to adopt 'best practices' that clearly favor public rather than private interests."[3] Critical to achievement of these pro-competitive ends are the Carrier-to-Carrier Performance Plan's reporting requirements, as well as the associated penalty provisions.[4]

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[1] August 10 *ex parte* at 3.

[2] Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License (Memorandum Opinion and Order), 15 FCC Rcd. 14032, ¶ 282 (2000) (*subsequent history omitted*).

[3] Id. at ¶ 279.

[4] Id. at ¶¶ 279 - 80.

Excluding DRL service from the Carrier-to-Carrier Performance Plan's performance reports would directly hinder achievement of the merger condition's objective of ensuring nondiscriminatory treatment of resale carriers by Verizon. Worse yet, it would not only reward Verizon for unlawfully refusing for years to provide for the Section 251(c)(4) resale of DSL service, allowing the carrier to benefit from a policy which the Commission has acknowledged "severely hinder[ed] the ability of other carriers to compete,"[5] but to roll out DRL service without meaningful regulatory or industry oversight or fear of monetary consequences for performance failings.

[5] Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in Connecticut (Memorandum Opinion and Order), CC Docket No. 01-100, FCC 01-208, ¶ 32 (July 20, 2001).

In assessing the *bona fides* of Verizon's contention that it must be afforded "an opportunity to gain commercial experience providing the new service" before it is held accountable for the results of its endeavor, it is important to bear in mind that VADI has never been precluded from offering DSL service for discounted resale. The Bell Atlantic/GTE merger conditions merely required Verizon to provide advanced services though a separate affiliate; they did not prevent the separate affiliate from offering DSL service for discounted resale.[6] Verizon chose to exploit the separate advanced services affiliate merger condition to avoid its Section 251(c)(4) resale obligations as they related to DSL service, unilaterally electing not to offer DSL service for resale at statutory discounts in order to deny competitors access to this essential service. And after VADI was held to bear the duties and obligations of an incumbent local exchange carrier,[7] Verizon, despite the Commission's directive that it promptly "come into compliance with section 251(c)(4) in accordance with the terms of the . . . decision [of the U.S. Court of Appeals in *Association of Communications Enterprises v. Federal Communications Commission*],"[8] continued to shirk its Section 251(c)(4) resale obligations as they related to DSL service using the farcical excuse that the Commission's pro-competitive line sharing rules insulated VADI from those obligations. The Commission soundly rejected this contention, finding it to be contrary to the "plain language of Section 251(c)(4)," "based on a misapplication of . . . [the] Commission's line sharing rules," and

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[6] Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License (Memorandum Opinion and Order), 15 FCC Rcd. 14032, at Appendix D, Section I.

[7] Association of Communications Enterprises v. FCC, 235 F.3d 662 (D.C. Cir. 2001).

[8] Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Service in Texas (Memorandum Opinion and Order), 15 FCC Rcd 18354, ¶ 252. fn 768 (2001) (*subsequent history omitted*).

"rest[ing] on precisely the conduct ruled unlawful by the court [in *Association of Communications Enterprises v. Federal Communications Commission*] -- the use of an affiliate to avoid section 251(c) resale obligations."[9]

[9] Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in Connecticut (Memorandum Opinion and Order), CC Docket No. 01-100, FCC 01-208 at ¶¶ 30 - 33.

As is apparent, Verizon has studiously avoided its Section 251(c)(4) resale obligations for years. It should not be relieved of its reporting and penalty obligations under the Carrier-to-Carrier Performance Plan because it was successful in its efforts. Verizon should have "gain[ed] commercial experience" with DSL service resale years ago. Any problems the carrier may experience at this late date are thus solely of its own making. ASCENT, accordingly, urges the Commission to strictly apply the Carrier-to-Carrier Performance Plan's reporting and penalty requirements both to incent Verizon to expeditiously rectify its past recalcitrance and to allow meaningful regulatory and industry oversight of the carrier's efforts in this regard. It is critically important to do so because of the severe adverse competitive consequences of Verizon's past failures to honor its Section 251(c)(4) resale obligations as they relate to DSL service, and the need to ensure rapid availability of resold DSL service.[10]

Respectfully submitted,

ASSOCIATION OF COMMUNICATIONS ENTERPRISES

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September 5, 2001

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[10] Id. at ¶ 32.